REMARKS

The Examiner has noted that the oath or declaration is defective. Attached please find copies of the Declaration And Power Of Attorney forms signed by all four inventors indicating citizenship and post office addresses.

Claim 8 has been cancelled and a new claim 12 added. Thus, claims 1 – 3 and 9 – 12 are pending in this application. New claim 12 is supported in the specification at page 4, lines 2 – 8, and page 12, line 1 through page 13, line 22.

The specification has been amended to correct an obvious error in the second paragraph on page 4.

The Examiner has rejected claims 1 – 3 and 8 – 11 under 35 USC 102(b) as being anticipated by Carroll et al. (US Patent No. 6,284,550). Claim 1 has been amended to include the limitations of claim 8 and claim 8 has been canceled. The rejection of the amended claim 1 and former claim 8 is respectfully traversed.

The amended claim 1 includes the limitations of the dry test strip having two stacks and that the concentration of LDL cholesterol is determined by subtracting the results from one of the stacks from the other of the stacks. Neither of these limitations is disclosed in Carroll et al. To anticipate a claim, the reference must teach every element of the claim. MPEP 2131. Thus, the amended claim 1 is not anticipated by Carroll et al.

Claims 2, 3, and 9 – 11 each depend on claim 1 and include all its limitations; therefore, they are patentable for the same reasons given above. *In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) at headnote 4. In addition, each of these claims contains a limitation not found in Carroll et al., and thus is patentable over Carroll et al. on its own.

The Examiner has rejected claims 1 – 3 and 8 – 11 under 35 USC 102(e) as being anticipated by Goldman (US Patent No. 6,844,149 B2). The rejection of the amended claim 1 and former claim 8 is respectfully traversed.

The amended claim 1 includes the limitation that the concentration of LDL cholesterol is determined by subtracting the results from one of the stacks from the other of the stacks. This

limitation is neither disclosed nor suggested in Goldman. To anticipate a claim, the reference must teach every element of the claim. MPEP 2131. Thus, the amended claim 1 is not anticipated by Goldman.

Claims 2, 3, and 9 – 11 each depend on claim 1 and include all its limitations; therefore, they are patentable for the same reasons given above. *In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) at headnote 4. In addition, each of these claims contains a limitation not found in Goldman, and thus is patentable over Goldman on its own.

The Examiner has rejected claims 1 – 3 and 8 – 11 under 35 USC 103(a) as being unpatentable over Carroll et al. (US Patent No. 6,284,550) and Goldman (US Patent No. 6,844,149 B2) in view of Nakamura et al. (US Patent No. 6,764,828 B2). Claim 1 has been amended to include the limitations of claim 8 and claim 8 has been canceled. The rejection of the amended claim 1 and former claim 8 is respectfully traversed.

It is noted that the Office Action does not even discuss the limitations of the former claim 8 and the amended claim 1 in making the rejection. The patent law is clear that specific limitations distinguishing over the references should not be ignored. *In re Glass*, 176 USPQ 489, 491 (CCPA 1973). Moreover, the combination of the references teach that LDL should be measured by allowing the reaction to proceed for a specific time kinetically monitoring a subsequent reaction or by adding an additional reaction accelerating agent. See Nakamura et al., column 4, lines 21 – 41. Thus, the combination of the references actually teaches against the claimed invention. A patent examiner must consider the whole of the teachings of the reference and not ignore the portion of a reference that teaches against the combination according to the invention. MPEP 2142.02, last section and MPEP 2145 X.D.

The method of the invention is much faster, simpler, and does not require timing. See the present application page 5, lines 15 –32. Thus, the application itself discloses significant advantages over the cited references.

Claims 2, 3, and 9 – 11 each depend on claim 1 and include all its limitations; therefore, they are patentable for the same reasons given above. *In re Fine*, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988) at headnote 4. In addition, each of claims 2, 9, and new claim 12 contain a limitation not found in the cited references, and thus is patentable over the cited references on its own.

In view of the above amendments and remarks, Applicants believe the pending application is in condition for allowance. Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-1848, under Order No. 023134.0107PTUS from which the undersigned is authorized to draw.

Respectfully submitted,
PATTON BOGGS LLP

Dated: January 17, 2006

By: _____
Carl A. Forest
Registration No.: 28,494
(303) 894-6114
(303) 894-9239 (Fax)
Attorney for Applicants

Customer No. 24283